United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/873
31 July 1998

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 873

Case No. 974: PATEL

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mayer Gabay, First Vice-President, presiding; Ms. Deborah Taylor Ashford, Second Vice-President; Mr. Chittharanjan Felix Amerasinghe;

Whereas, on 1 May 1997, Bhaichand Patel, a former staff member of the United Nations, filed an application requesting the Tribunal, inter alia:

"[To order that]:

(i) He ... be paid Indian Rupees 150,000 ($4,225) as reimbursement by the Secretary-General for storage charges for his household effects due to him as intended by the Joint Appeals Board;

(ii) He ... be paid daily subsistence allowance at 100 per cent rate for New York for the period 30 November 1993 through 23 January 1994 instead of the 50 per cent rate recommended by the Joint Appeals Board;

(iii) He ... be paid costs of this application. ...."

Whereas the Respondent filed his answer on 3 December 1997;

Whereas the Applicant filed written observations on 20 March 1998;

Whereas, on 6 July 1998, the Tribunal put questions to the Respondent, to which he provided answers on 9 July 1998, and on which the Applicant commented on 20 July 1998;

Whereas, on 23 July 1998, the Respondent submitted an additional document;

Whereas, on 28 July 1998, the Applicant provided his comments on the Respondent's submission;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations, Office of Public Information, Press and Publications Division, in New York on 1 September 1971, on a fixed-term appointment for one year, as an Associate Information Officer at the P-2 level. He received two more fixed-term appointments, until 1 March 1974, when his appointment became permanent. The Applicant received promotions to the P-3, P-4 and P-5 levels, with effect from 1 April 1974, 1 April 1977 and 1 August 1983, respectively. On 1 February 1986, the Applicant was reassigned to New Delhi, as Director of the United Nations Information Centre (UNIC). On 1 July 1990, the Applicant was promoted to the D-1, step V level. On 24 March 1994, the Applicant was reassigned to Manila as Director, UNIC. On 31 January 1997, the Applicant retired from the Organization.

In a memorandum dated 26 August 1993, the Director of the Department of Public Information (DPI) informed the Applicant that he would be reassigned to New York, with effect from 1 October 1993. The Director, DPI, further stated "please make the necessary arrangements for your move back to Headquarters by 1 October 1993." On 21 September 1993, the Applicant sought from the Executive Officer, DPI, authorization to charge the costs of the packing of his household effects to a UN account. By memorandum dated 16[sic] September 1993, DPI authorized the Applicant to do so, and provided him with an account number to which he could charge his packing costs.

On 28 September 1993, the Assistant Secretary-General for Public Information informed the Applicant that he was being reassigned as Director, UNIC, in Manila, with effect from 1 October 1993. He was to assume his duties "as soon as possible but no later than 18 October", and he should cease to exercise the functions of Director, UNIC, New

Delhi after 30 September 1993. In a reply dated 29 September 1993, the Applicant requested reconsideration of such assignment, because he preferred to be in New York for family reasons. He stated that he would be willing to go on a mission while awaiting a post at Headquarters. Thus, starting in October, the Respondent sought a mission assignment for the Applicant.

On 8 November 1993, the Chief, External Relations Service, Promotion and External Relations Division (PERD), DPI, wrote a memorandum to the Acting Director of UNIC, New Delhi, asking that he convey to the Applicant that "any travel to New York at this time is your personal decision and responsibility" and "[t]here is no DPI/Secretariat authorization or commitment in this matter". (Emphasis in the original.) On 29 November 1993, the Applicant wrote to the Director, PERD/DPI, stating that he "arrived in New York on 11 November 1993 at [his] own expense to rejoin [his] family" and that he would "be grateful if some duties and responsibilities are assigned to [him] at Headquarters."

On 3 January 1994, the Officer-in-Charge, DPI, wrote to the Director, Personnel Service, OHRM, seeking guidance concerning the status of the Applicant, "who has exhausted his annual leave balance." In a communication dated 4 January 1994, the Officer-in-Charge, PERD, DPI, instructed the Applicant to assume his assignment with UNIC Manila no later than 1 February 1994, as no other mission assignment had materialized. In that same communication, the Applicant was informed that since he was being reassigned from one field duty station to another, his travel authorization would be from New Delhi to Manila. He was further informed that since it was "normal practice to arrange official briefing programmes at Headquarters for field colleagues who may be in New York on personal visits," he could attend a five-day briefing programme in New York before his departure for Manila. During the *last* week of January 1994, the Applicant attended such a briefing programme. On 28 January 1994, the Applicant was informed that his departure for Manila was to be postponed. On 15 March 1994, the Applicant was instructed to proceed to Manila. On 24 March 1994, the Applicant arrived in Manila. The Applicant was paid daily

subsistence allowance for the time he spent in New York from 1 February 1994, until his departure for Manila.

On 17 March and 22 April 1994, the Applicant wrote memoranda to the Officer-in-Charge, Staff Administration and Monitoring Service (SAMS), OHRM, requesting that the period between the time he left his post in New Delhi and the time he was reassigned to Manila on 30 January 1994, be considered "special leave with full pay" rather than as "annual leave". On 18 May 1994, the Officer-in-Charge, SAMS, OHRM, informed the Applicant that "any period of time spent outside your duty station, pending your reassignment to another duty station, was not considered as 'official' and had therefore to be treated as annual leave."

On 23 May 1994, the Applicant requested the Secretary-General to review the administrative decision of 18 May 1994.

On 15 August 1994, having received no reply to his request for review, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 15 June 1995. Its recommendations read as follows:

"Recommendations

52. ...

(a) That the Administration pay the Appellant the DSA [daily subsistence allowance] in New Delhi for the period from 1 October 1993 through 10 November 1993;

(b) That the Administration restore the annual leave charged to the Appellant from 30 November 1993 through 23 January 1994, and pay the Appellant 50% of the DSA in New York for this period;

(c) That the Administration reimburse the Appellant for the cost of his airfare from New York to Manila in March 1994; and

(d) That the Administration reimburse the Appellant for storage of his household effects through 24 March 1994, based on the cost of such storage in New Delhi.

53. The Panel recommends that the Appellant's other claims be rejected."

On 21 June 1995, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report and informed him as follows:

"The Secretary-General has examined your case in the light of the Board's report. He has noted the Board's findings that the Administration could not consider you as being on annual leave from 30 November 1993 to 23 January 1994. The Board further found you to be responsible for the following:

- Airfare, New Delhi to New York;
- Costs of shipment and related charges (and additional shipping and customs charges associated therewith) of household effects from New Delhi to New York;
- Storage of household effects in New York.

The Board found, on the other hand, that you should be entitled to reimbursement in respect of the following:

- Airfare, New York to Manila (March 1994);
- Shipment of household effects based on the cost of shipping such household effects from New Delhi to Manila;
- Storage of household effects, based on the cost of such storage in New Delhi, for the period September 1993 through 24 March 1994.

Based on the above findings, the Board recommends that you be paid the DSA in New Delhi for the period from 1 October 1993 through 10 November 1993; that the Administration restore your annual leave from 30 November 1993 through 23 January 1994 and that you be paid 50% of DSA in New York for this period. The Panel further recommends that you be reimbursed for the cost of airfare from New York to Manila (March 1994), for the storage of your household effects through 24 March 1994, based on the cost of such storage in New Delhi. The Panel rejects all other claims.

The Secretary-General accepts the Board's recommendations and has decided, accordingly, that you be reimbursed as recommended and that your leave records be adjusted accordingly. The Secretary-General takes no further action in your case."

On 1 May 1997, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The application is timely and thus receivable because (a) the Applicant complains of the failure properly to implement the recommendations of the JAB that were accepted by the Respondent and (b) the Applicant made numerous efforts between 15 June 1995 and 25 March 1997 to resolve the matter with the Respondent.

2. The Respondent has misinterpreted the JAB's proper recommendation, adopted by the Respondent, concerning the amount to be paid to the Applicant for the storage of his household effects. The Applicant is entitled to the amount that it would have cost to store his goods in New Delhi from 9 November 1993, when he left New Delhi, until 24 March 1994, when he arrived in Manila. The Respondent incorrectly paid him the amount it would have cost to store his household effects only from 1 February 1994, i.e., the date that he was instructed to assume his duties in Manila before such date was postponed, through 24 March 1994. The Chairman of the JAB agrees with the Applicant as to the Applicant's interpretation.

3. The Respondent incorrectly determined that the cost of storing the Applicant's household effects in New Delhi would be $275 per month. The appropriate amount for storing the Applicant's household effects from 11 November 1993 to 24 March 1994, according to the company that had packed them, as authorized by the Respondent, would have been Indian Rupees 150,000, or US$ 4,225.

4. The JAB erred by recommending that the Applicant be paid 50 per cent DSA, rather than 100 per cent DSA, for the period between 30 November 1993 (when he returned

from annual leave) and 24 January 1994 (when he began to receive 100 per cent DSA).

Whereas the Respondent's principal contentions are:

1. The Applicant's claims are time-barred and therefore not receivable. The application, dated 1 May 1997, contests the Respondent's decision of 21 June 1995, and thus falls outside the 90 days prescribed by Article 7, paragraph 4 of the Statute of the Tribunal.

2. The Applicant is not entitled to 100 per cent DSA from 30 November 1993 through 23 January 1994, rather than the 50 per cent he received, because he had travelled to New York with the understanding that the Respondent had not authorized such travel as official.

3. The Applicant was adequately compensated for the storage of his household effects from 1 February 1994 through 24 March 1994.

The Tribunal, having deliberated from 6 to 31 July 1998, now pronounces the following judgement:

I. The Applicant appeals the decision by the Secretary-General, accepting the recommendations of the Joint Appeals Board (JAB), to pay the Applicant 50 per cent of the daily subsistence allowance (DSA) in New York for the period from 30 November 1993 through 23 January 1994, and the Respondent's failure to properly implement his decision to reimburse the Applicant for the costs of the storage of his household effects based on the cost of storage of such household effects in New Delhi through 24 March 1994.

II. The Applicant claims that he should have been compensated in the amount of $4,225 as estimated costs for the storage of his household effects, on the basis of an estimate he provided to the Respondent, instead of the amount of $500 paid to him on the basis of an

estimate for the storage of his goods that had been solicited by the Respondent. He also submits that he should have been paid 100 per cent of DSA in New York for the above-stated period.

III. Prior to considering the case on the merits, the first issue that must be determined by the Tribunal is whether the Applicant's claims are time-barred. The relevant provisions of the Statute of the Tribunal dealing with the time limits for a staff member to file an application to the Tribunal are article 7, paragraphs 2 and 4, which read as follows:

> "2. In the event of the joint body's recommendations being favourable to the application submitted to it, and insofar as this is the case, an application to the Tribunal shall be receivable if the Secretary-General has:
>
> (a) Rejected the recommendations;
> (b) Failed to take any action within the thirty days following the communication of the opinion; or
> (c) Failed to carry out the recommendations within the thirty days following the communication of the opinion.
>
> ...
>
> 4. An application shall not be receivable unless it is filed within ninety days reckoned from the respective dates and periods referred to in paragraph 2 above, or within ninety days reckoned from the date of the communication of the joint body's opinion containing recommendations unfavourable to the applicant. ..."

IV. The Applicant admits that he received the Secretary-General's decision on the JAB's recommendation on or about 21 June 1995. The Applicant filed his application with the Tribunal on 1 May 1997, without having requested the Tribunal for any extensions of the time limit for filing an application. Accordingly, with respect to the Applicant's claim for payment of DSA, he clearly filed his application beyond the time limits set forth in article 7, paragraph 4 of the Tribunal's Statute. The Applicant has not presented any compelling reason to suspend the time limits, nor does the Tribunal find any such compelling reason. Therefore,

the Tribunal concludes that the claim for the payment of DSA is time-barred.

The claim for the payment for costs of storage of the Applicant's household goods, on the other hand, was the subject of on-going communications between the parties regarding such payment. The Applicant was informed on 27 January 1997, that he would receive $500 as payment for the costs of his storage, despite his having provided the Respondent with an estimate of $4,225. In response to his enquiries to the Administration as to why he received only $500, he was informed, on 31 January 1997, that such determination had been made by the Under-Secretary-General, DAM. On 3 February 1997, the Applicant asked the Under-Secretary-General , DAM, for clarification of the matter. Having received no reply, the Applicant filed his application with the Tribunal on 1 May 1997. Accordingly, the Tribunal finds that the Applicant's claim relating to the costs for storage of his household goods is not time-barred.

V. The Applicant's claim for the reimbursement of the cost of storage of his household goods arises from a dispute between the parties regarding the implementation of the Secretary-General's decision to accept the JAB's recommendation "that the Administration reimburse the Applicant for storage of his household effects through 24 March 1994, based on the cost of such storage in New Delhi."

The Tribunal interprets that recommendation as finding that the Applicant was entitled to reimbursement for the cost of storage of his household effects, based on the cost of such storage in New Delhi, from 9 November 1993 through 24 March 1994.

The Respondent paid the Applicant only $500 based on an estimate of the cost of storage for the period from 1 February to 24 March 1994. The Respondent contends that the Applicant submitted an estimate for the cost of storage from an agent not authorized by the UN. In response to questions put by the Tribunal, the Respondent stated: "In New York, the UN has a contract with the general contractor Matrix Logistics International and it is up to Matrix to select their agents overseas. ... Our estimate of USD500.00 for the period

1 February - 24 March 1994 was based on the quotation from Matrix." The Applicant had submitted an estimate of storage charges in New Delhi, by the same forwarding and clearing agent that had packed and stored the Applicant's household goods during the period from 18 September to 9 November 1993.

The Respondent's argument that the agent whose invoice the Applicant submitted is listed by UNDP as an authorized agent in Bombay and not in New Delhi does not change the status of that company as a UN-authorized agent. In fact, it appears that the Respondent had authorized payment to that same agent for the packing and storing of the Applicant's household goods for the period from 18 September to 9 November 1993, which lends further support to the Applicant's claim that such agent was a UN-approved agent. The Applicant's claim for $4,225, less the $500 that he already received, is therefore well-justified.

VI. Accordingly, the Tribunal:

(1) Orders the Respondent to pay $3,725 to the Applicant.

(2) Rejects all other pleas.

(Signatures)

Mayer GABAY
First Vice-President, presiding

Deborah Taylor ASHFORD
Second Vice-President

Chittharanjan Felix AMERASINGHE
Member

Geneva, 31 July 1998

R. Maria VICIEN MILBURN
Executive Secretary

United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/874
31 July 1998

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 874

Case No 975: ABBAS

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Ms. Deborah Taylor Ashford, Vice-President; Mr. Kevin Haugh;

Whereas, on 12 May 1997, Yaser Abbas, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application requesting the Tribunal, inter alia:

"a. [To] reinstat[e] him to duty.
b. [To] consider [the] period of cessation as special leave with full pay.
c. [To] compensat[e] him for the injury caused to him in US dollars computed at the UN operational rate of exchange available at the time of separation.
d. [To order] payment of secretarial fees and legal expenses estimated at US$500."

Whereas the Respondent filed his answer on 6 August 1997;

Whereas the Applicant filed written observations on 26 October 1997;

BEST COPY AVAILABLE

Whereas the Applicant filed an additional submission on 17 April 1998;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 7 January 1985, on a temporary assistance contract, as a Trade Instructor (Electrician) through 8 August 1985. On 18 September 1985, the Applicant was granted a temporary indefinite appointment, as an Area staff member, in the post of Trade Instructor "B" (Electrician), at the grade 9, step 1 level, at the Damascus Training Centre (DTC), Syrian Arab Republic (SAR). At the completion of a probationary period, his appointment was confirmed on 5 October 1986. On 1 October 1989, the Applicant was promoted to the grade 10, step 5 level. The Applicant was separated from service at the close of business, 19 April 1995.

From the time he entered service through 1994, the ratings on the Applicant's periodic reports ranged from satisfactory to outstanding. In 1992, the Applicant received two letters from the Director, UNRWA Affairs, commending him on his work.

From October 1993 to January 1995, the Applicant was reprimanded several times for absenting himself from his place of duty and for smoking in the workshop in the presence of trainees. On 7 January 1995, the Principal, DTC, sent a letter to the Applicant that listed the Applicant's unauthorized absences and instances of lateness. It warned the Applicant that if there were any further complaints about his conduct, the Agency would be obliged to take appropriate action. On 9 January, 19 February, and 13 March 1995, the Principal, DTC, again noted that the Applicant was absent from duty without permission. On 20 March 1995, he was again reprimanded and on 29 March 1995, he received a written censure for further repeated absences. On 6 and 13 April 1995, the Applicant again absented himself from duty, without permission or valid reason.

On 12 April 1995, the Applicant submitted his resignation, with effect from 20 April 1995, citing as reasons (1) severe pain in his spinal cord and (2) a bad psychological and

nervous condition. By letter dated 13 April 1995, the Field Personnel Officer, SAR, informed the Applicant that despite the Applicant's insufficient notice, the Agency accepted his resignation, with effect from the close of business 19 April 1995. On 18 April 1995, the Applicant wrote to the Director, UNRWA Affairs, requesting cancellation of his resignation. In a reply dated 19 April 1995, the Field Administration Officer informed the Applicant that his request was not approved.

On 8 May 1995, the Applicant wrote to the Director of UNRWA Affairs, SAR, asking him to reconsider the Administration's decision. On 20 May 1995, the Field Administration Officer informed the Applicant that his request to withdraw his resignation would be denied, in view of "[t]he experience the Agency had with [him] last year".

On 29 May 1995, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 19 March 1997. Its findings and recommendation read, in part, as follows:

> "...
>
> (c) The Board noted that the Appellant's letter of resignation stated that he was unable to report to work because of the severe pain in his spinal cord, and a bad psychological and nervous condition. Therefore, the Board is of the opinion that this is sufficient grounds for not accepting the withdrawal of the Appellant's resignation.
>
> (d) Moreover, the Board took note of rule 109, paragraphs (1) and (3) that states:
>
> > 1. A staff member resigns who gives to the Agency a written notice of resignation as required under paragraphs 2 and 3 below. A resignation as here defined is always initiated by a staff member.
> >
> > ...
> >
> > 3. Every notice of resignation shall contain a written statement of the staff member's decision to resign, shall be signed by the staff member and shall specify the date on which he/she proposes that his/her resignation should take effect.

(e) By reference to the Appellant's personal file the Board noted that the Appellant had a turbulent career, numerous reprimands, and a letter of censure and unauthorized absence.

(f) ... the Board could not establish that the Administration's decision appealed against has been motivated by prejudice or any other extraneous factors, and resolved that the Administration has acted within the framework of standing Rules and Regulations.

IV. RECOMMENDATION

23. In view of the foregoing and without prejudice to any further oral or written submission to any party, the Appellant may deem pertinent, the Board unanimously makes its recommendation to uphold the Administration's decision appealed against and that the case be dismissed."

On 15 April 1997, the Commissioner-General transmitted to the Applicant a copy of the JAB report and informed him as follows:

"... I have carefully reviewed the Board's report and noted its conclusions. The Board noted that you had resigned because of your physical incapacity and that your career with the Agency had been turbulent. The Board was of the opinion that it had not been established that the Administration's decision not to re-employ you had been motivated by prejudice or any other extraneous factors and accordingly recommended that your appeal be dismissed.

I agree with the Board's conclusions which are consistent with the Agency's policy, set out in personnel directive A/4, of not re-employing staff members who have resigned unless there is a clear element of Agency interest in doing so. Therefore, I have accepted the Board's recommendations. Your appeal is dismissed."

On 12 May 1997, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant claims that the 13 April 1995 letter to him accepting his resignation was not dispatched until 18 April 1995. Therefore, the Applicant withdrew his resignation before the Respondent accepted it, rendering the resignation null and void.

2. The Applicant should not have been penalized for his absences. The absences only took place during hours when no classes or workshops were in session. The reprimands were part of a campaign by his supervisor to get rid of the Applicant.

3. The Applicant's resignation was the product of "pressure and oppression exercised against him".

4. The JAB Panel was biased because the Chairman was the Principal of the Amman Training Centre in Jordan, and because one member was the Principal of the DTC and was involved in the Applicant's case, having written some of the aforementioned reprimand letters to the Applicant.

5. The Applicant is entitled to be compensated in US dollars because benefits are payable in US dollars at the exchange rate available at the time of separation.

Whereas the Respondent's principal contentions are:

1. The Respondent's decision not to accept the Applicant's withdrawal of his resignation was a proper exercise of managerial discretion. A resignation is a unilateral act that does not depend on any acceptance by the Respondent. The Respondent acted in conformity with his policy not to re-employ staff members who have resigned. Although the Applicant had cited health problems as the reason for his resignation, the Applicant failed to provide any reason for subsequently seeking withdrawal of such resignation.

2. The Applicant fails to demonstrate any prejudice or improper motive on the part of the Respondent.

3. The Applicant cannot now be heard to complain about the composition of the JAB when he never raised any objections at the time that the JAB heard his case.

The Tribunal, having deliberated from 1 to 31 July 1998, now pronounces the following judgement:

I. The principal issue raised by the Applicant is whether, under the applicable rules, a resignation becomes effective only after it has been accepted by the Respondent. As discussed below, the Tribunal finds that a resignation becomes effective when submitted and does not require the Respondent's approval to become effective. Any other finding would make a staff member's desire to discontinue his or her service subject to the Respondent's control -- a result clearly not contemplated by the staff rules related to resignation. Because the Tribunal finds that the resignation was effective upon submission, the arguments by the Applicant regarding the timing of the Respondent's "acceptance" and of the Applicant's "withdrawal" are irrelevant.

II. Area staff rule 109.6, paragraph 1, states that "[a] staff member resigns who gives to the Agency a written notice of resignation as required under paragraphs 2 and 3 below. A resignation as here defined is always initiated by a staff member." Paragraphs 2 and 3 of the rule address the notice requirements. They read, in relevant part:

> "2. A staff member who resigns shall give to the Agency:
>
> (A) Such period of notice as is provided for in his/her letter of appointment; or
>
> ...
>
> (C) Such other period of notice as the Commissioner-General may at his discretion accept.
>
> 3. Every notice of resignation shall contain a written statement of the staff member's decision to resign, shall be signed by the staff member and shall specify

the date on which he/she proposes that his/her resignation should take effect."

The Tribunal finds that the Applicant's letter of 12 April 1995 complied with the essential requirements of area staff rule 109.6 since it contained written notice of the decision to resign, was signed by the Applicant and specified the date on which he proposed that the resignation should take effect.

III. The language of area staff rule 109.6, suggests, on its face, that a staff member's compliance with the conditions of the rule constitutes resignation: "[a] staff member resigns who gives to the Agency a written notice of resignation." There is no indication that the validity of the resignation is conditioned on acceptance. In addition, if the rule were to require consent in order to make resignation effective, then a staff member who wished to leave would be at the mercy of the Agency which, for either arbitrary or malicious reasons, wished to impede a staff member's departure. The Tribunal cannot conceive that the rule was intended to confer on the Agency such authority over a staff member's decision to leave.

IV. Area staff rule 109.6, paragraph 2(C), does give the Commissioner-General discretion in regard to resignations in one circumstance. If the staff member specifies a period of notice for resignation that does not comport with the terms of the letter of appointment, then "the Commissioner-General may at his discretion accept" such other period. In the case before the Tribunal, the Applicant requested that his resignation be effective eight days after the date of his letter giving notice. The Applicant's letter of appointment required him to give "not less than 30 days written notice" of resignation. Thus, the Applicant did not give the requisite notice for his resignation. It is clear from area staff rule 109.6, paragraph 2(C) that the Applicant's resignation could not have been effective eight days after he submitted his letter, without the Commissioner-General's approval. The Applicant asks the Tribunal to find that the resignation could not have been valid until

accepted by the Commissioner-General. According to this reasoning, the validity of a resignation that complies with the terms of area staff rule 109.6 in all respects, except for adequate written notice, would be rendered subject to the Commissioner-General's approval in its entirety. The Tribunal interprets area staff rule 109.6 paragraph 2(C) to give the Commissioner-General discretion regarding the date that the staff member's resignation becomes effective, rather than regarding the validity of the resignation. In addition, the Tribunal finds that the Respondent's letter accepting the Applicant's resignation (dated 13 April 1995), was adequate under area staff rule 109.6, paragraph 2(C) to make the resignation effective eight days after the date of the resignation letter of 13 April, as the Applicant requested.

V. The Applicant contends that the Respondent's decision not to accept his request to withdraw his resignation was based on prejudice and constituted an abuse of discretion. Because the Tribunal concludes that the Applicant's resignation was effective under area staff rule 109.6, the issue of the Applicant's request to withdraw his resignation is subject to rules regarding re-employment. Personnel directive A/4/Part VI/Rev.5, paragraph 3.2, provides that reappointment should be "carefully considered, and should not normally be approved unless there is a *clear element of Agency interest* in obtaining the former staff member's services again." (Emphasis added). The burden is on the Applicant to present convincing evidence when alleging that the decision not to grant re-employment is tainted by prejudice or improper motivation. (Cf. Judgement No. 553, Abrah (1992), para. IX).

VI. The Tribunal finds that the Applicant has not offered convincing evidence that the Respondent's decision was tainted by prejudice or improper motivation. The Applicant had received numerous reprimands and a letter of censure for various absences from work over a

period of nineteen months prior to his resignation. According to the record before the Tribunal, the Applicant did not appeal the various reprimands or censures. In addition, the Applicant had asserted both a medical and psychological condition as reasons for his resignation. Personnel directive A/4/Part VI/Rev.5, paragraph 3.5 establishes a presumption that employees "separated on health grounds" are "incapacitated from further service" and "should not be re-employed in any capacity." It would have been reasonable for the Respondent to accept the Applicant's asserted reasons accompanying his resignation and to be reluctant to re-employ him without a substantial Agency interest in his re-employment. Therefore, it was reasonable for the Respondent to determine that he should decline to accept the Applicant's request to withdraw his resignation. The Applicant has fallen far short of meeting his burden of producing convincing evidence of prejudice with respect to the Respondent's decision. With respect to the question of whether the Respondent abused his discretion in not accepting the Applicant's request to withdraw his resignation, the Tribunal concludes that the Respondent's decision was reasonable and did not constitute an abuse of his discretion.

VII. The Applicant also asserts that the resignation itself was the product of "pressure and oppression". The crux of this claim seems to be that the Respondent attempted to coerce the Applicant's resignation through reprimands and censures. The Tribunal agrees with the Respondent that, in a claim that a resignation was coerced, the burden of proving improper motive or coercion is on the Applicant. (Cf. Judgement No. 93, Cooperman (1965), para. XII). The Applicant argues that the fact that he resigned is, in itself, evidence of coercion because his UNWRA employment was his only potential source of income in the area. He also argues that his periodic reports were positive. In addition, the Applicant notes that his first reprimand cited absences allegedly having taken place as much as two years earlier.

Finally, the Applicant asserts that his alleged tardiness in reporting related to office hour requirements to which he, as a member of the teaching staff, should not have been subject. The Tribunal finds that the record before it does not sustain the Applicant's claim that his resignation was coerced.

VIII. The Applicant asserts that the JAB's recomendation should be invalidated due to the appearance of a conflict of interest. The JAB that heard the Applicant's initial appeal included the Principal, Damascus Training Center, who was the Applicant's supervisor and who issued the reprimands dated 7 January and 20 March 1995 which constitute part of the Applicant's coercion claim. It is a clearly established principle that the JAB should make every effort to avoid even the appearance of bias or partiality. Paragraph 10 of area staff rule 111.2 gives the parties the right to request the removal of any Board member. The Applicant failed to challenge the Principal, Damascus Training Center's participation at the time of the hearing; however, the Chairman has the authority to "excuse any member from the consideration of a specific appeal" regardless of the parties' requests. The Tribunal finds that while the Applicant erred in not challenging the participation of the Principal, Damascus Training Center, at the time of the hearing, the Chairman also erred in permitting one whose interest was so inextricably bound in the issue before the JAB so as to raise a question whether he could play an impartial role. (Cf. Judgement No. 624, Muhtadi (1993)). The Tribunal concludes that although the participation of the Principal, Damascus Training Center, should have been questioned, the recommendation of the JAB likely would not have been different, nor would the decision of the Tribunal.

IX. For the foregoing reasons, the Tribunal rejects the Applicant's pleas in their entirety.

(Signatures)

Hubert THIERRY
President

Deborah Taylor ASHFORD
Vice-President

Kevin HAUGH
Member

Geneva, 31 July 1998

R. Maria VICIEN MILBURN
Executive Secretary

United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/875
31 July 1998

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 875

Case No. 976: THACKER

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mayer Gabay, First Vice-President, presiding; Ms. Deborah Taylor Ashford, Second Vice-President; Mr. Chittharanjan Felix Amerasinghe;

Whereas at the request of Helen Thacker, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended to 31 December 1996, 31 March and 30 June 1997, the time-limit for the filing of an application to the Tribunal;

Whereas, on 29 May 1997, the Applicant filed an application requesting the Tribunal, inter alia, as follows:

"(a) To recommend that the decision to separate the appellant from service be rescinded and to recommend her immediate reinstatement with full pay from the date of her separation up to the date of her retirement;
(b) To recommend an additional payment of $250,000 for the damages caused to the appellant's career and reputation as well as for the moral and psychological injury caused by the Respondent's actions;
(c) To remove all negative and prejudicial material from the appellant's file;
(d) To recommend the additional payment of $50,000 as compensation for the delays caused by the Administration in dealing with her case."

BEST COPY AVAILABLE

Whereas the Respondent filed his answer on 23 September 1997;

Whereas the Applicant filed written observations on 29 December 1997;

Whereas, on 9 July 1998, the Tribunal put questions to the Respondent, to which he provided answers on 13 July 1998;

Whereas, on 10 July 1998, the Applicant submitted an answer to the Tribunal's questions of 9 July 1998;

Whereas, on 15 July 1998, the Applicant submitted her comments on the Respondent's communication of 13 July 1998;

Whereas, on 20 July 1998, the Respondent submitted an additional document, on which the Applicant commented on 22 July 1998;

Whereas, on 6 August 1998, the Applicant submitted an additional document;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 3 January 1974, as a Clerk-Stenographer, at the G-3 level, on a fixed-term appointment in the Financial Resources Development Branch, Centre for Development Planning, Projections and Policies, in the Department of Economic and Social Affairs. On 3 April 1974, she received a probationary appointment. On 1 November 1975, she was transferred to the UN Centre on Transnational Corporations (UNCTC). On 1 January 1976, she was granted a permanent appointment. On 1 April 1977, she was promoted to the G-4 level, with the functional title of Secretary/Clerk. Her performance evaluations between 1974 and 1982, ranged from "A" (excellent) to "B" (very good). Her permanent appointment having been terminated for abolition of post, she separated from service with effect from 31 December 1993.

On 12 July 1984, the Chief of Staff Services and the Personnel Officer met with the Applicant to discuss two work-related incidents involving her dealings with other staff members. The Personnel Officer's Note on this meeting was placed in the Applicant's official status file and a copy was sent to the Applicant.

In June 1988, the Executive Office identified the Applicant as one of four staff members in her division whose performance evaluation reports (PERs) were overdue. Although repeated reminders were sent, no PER could be completed because the Applicant had not filled out Part A.

In May 1992, the Applicant filled out Part A of her PER. In June 1992, the First Reporting Officer completed Part B, noting that he had supervised her only for the past two years and that his evaluation was based on her performance during the period 1990 - 1992. She received a rating of "B" (very good) in all categories except for "Sense of responsibility and dependability as regards working hours" and "Oral Expression in English" for both of which she received a rating of "A" (excellent). The Second Reporting Officer gave her an overall rating of "Good".

In 1992, the General Assembly mandated the Secretary-General to restructure and revitalize the economic and social sectors of the Organization. The restructuring, which took place in 1993, involved the movement of whole divisions between Rome, Vienna, New York and Geneva and the redeployment of about 150 staff, including 76 General Service staff, in a short period of time.

In a letter dated 28 June 1993, the Acting Director of Personnel, OHRM, informed the Applicant that the restructuring of the economic and social sectors had entered its full implementation phase, and that her post would be redeployed to UNCTAD by the end of September 1993. The Applicant was informed that a task force had been created to reassign locally recruited General Service staff whose posts would be redeployed. The Applicant's name had already been submitted to the General Service Staffing Section with a view to finding a suitable assignment for her. She asked the Applicant to review her fact sheet to ascertain whether all relevant information had been properly reflected therein and to bring any additional information to the attention of OHRM in writing.

In a memorandum dated 25 October 1993, the Officer-in-Charge, General Service Staffing Section, informed the Officer-in-Charge, Staff Administration and Monitoring

Service, that she had been unable to place two of the General Service staff from UNCTC and CSTD, including the Applicant.

In a memorandum dated 29 October 1993, the Director of Personnel, reported to the Under-Secretary-General, DAM, that most of the General Service staff in the four duty stations affected by the restructuring exercise had been placed. She recommended the termination of the appointments of nine staff members, including the Applicant, for abolition of post. On 3 November 1993, the Under-Secretary-General, DAM, approved the recommendation.

On 1 December 1993, the Officer-in-Charge, General Service Staffing Section, informed the Officer-in-Charge, Staff Administration and Monitoring Services, as a follow-up to her memorandum of 25 October, that she had sent the Applicant's file to numerous offices -- Department of Peace-Keeping Operations (DPKO), Field Operations Division (FOD), Department of Administration and Management (DAM), United Nations Centre for Human Settlements (HABITAT), and the International Civil Service Commission (ICSC) -- but that, due to the "controversial" material in her file, none of them had agreed to absorb the Applicant.

By letter dated 15 December 1993, the Director of Personnel confirmed to the Applicant that the Secretary-General had decided to terminate her appointment for abolition of post with effect from 31 December 1993, in accordance with staff regulation 9.1(a), and to grant her a termination indemnity in accordance with Annex III to the Staff Regulations, as well as three months' salary in lieu of notice as stipulated in staff rule 109.3(c).

On 30 December 1993, the Applicant requested the Secretary-General to review the administrative decision to terminate her permanent appointment.

On 25 February 1994, the Applicant, through her counsel, requested the Joint Appeals Board (JAB) to seek a conciliatory solution under staff rule 111.2 (b). A conciliator was designated, who pursued various possible solutions, but without success.

The JAB adopted its report on 26 July 1996. Its unanimous conclusions read, in part, as follows:

"Conclusions and Recommendation

...

36. The Panel was of the opinion that although the Appellant's personnel file did contain documents which offered unfavorable descriptions of the Appellant's demeanor in the work-place, the Appellant had not been unaware of this material. On several occasions, the panel noted, she had elected to respond to the critiques. Thus, the Panel concluded, whether or not the Appellant had received copies of all of the documentation at issue at their origination times, she was aware that there was unflattering material in her personnel file. The Panel concluded that the Appellant did have the opportunity to inspect her file, to question and to challenge any data she deemed to be inaccurate or false and to request that certain documents be expunged from the record.

37. The Panel also concluded that, in compliance with staff rule 109.1, the Administration had undertaken efforts to find suitable posts for the displaced UNCTC staff and had been successful in placing most of them. The Panel also concluded that, although the Administration had not been able to place the Appellant, this would not appear to have been as the result of having wilfully ignored her nor did the Panel find any evidence of discriminatory behaviour toward the Appellant. However, the Panel wishes to note that the Appellant should have been issued a reply to her request that she be considered for a post in Geneva.

38. The Panel also wishes to express its belief that the Administration should be more proactive when attempting to help staff members find suitable positions following the abolition of their posts. Although it may not have affected the outcome of this case, the Panel notes that the staff member was not provided with detailed information about placement efforts put forth on her behalf. For example, she had not been informed about which departments had been asked to consider her, nor had she been told the reasons for their having rejected her.

39. Addressing the Appellant's contention that lack of timely performance evaluation reviews had adversely affected her placement opportunities, the Panel concluded that although the Administration had not been without fault when it neglected to ensure that the Appellant's PER's were issued and submitted when scheduled, the Appellant also contributed to this situation by procrastinating the completion of the PER sections for which she was responsible.

40. The Panel noted that the Appellant had been paid termination indemnity of twelve months salary, plus three months salary in lieu of notice. Therefore, the Panel concluded that the Administration had discharged its proper financial obligations to the Appellant. The Panel did not accept the Appellant's contention that because this termination time was close to her retirement date, it was discriminatory. The termination, it concluded, resulted from a department relocation and did not appear to have been the result of any wilful act of discrimination against the Appellant.

41. The Panel, having concluded that the Appellant's termination was a consequence of the relocation of UNCTAD, makes no recommendation in favor of this appeal."

On 19 August 1996, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report and informed her as follows:

"The Secretary-General has examined your case in the light of the Board's report and has taken note of the considerations and conclusions of the Panel. He has also taken note that the Panel made no recommendation in favour of your appeal and, accordingly, the Secretary-General had decided to take no further action in your case."

On 29 May 1997, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant was subjected to discriminatory treatment and was separated from service in violation of her rights.

2. The Respondent did not make a good faith effort to place the Applicant in another position after her post was abolished.

3. The Respondent's failure to issue a PER for the Applicant for over ten years and the improper placement of negative material in her official status file adversely affected her ability to be placed in a new post.

Whereas the Respondent's principal contentions are:

1. The Applicant's permanent appointment was properly terminated for abolition of post in accordance with staff regulation 9.1 (a).

2. There is no evidence that the decision to terminate the Applicant's appointment was discriminatory.

3. The Respondent fully discharged his obligation under staff rule 109.1 (c) to make good faith efforts to find alternative placement for the Applicant.

4. Events and actions subsequent to the Applicant's separation, relating to conciliation efforts, are irrelevant to the present appeal.

The Tribunal, having deliberated from 9 to 31 July 1998, now pronounces the following judgement:

I. The Applicant appeals from a decision by the Secretary-General to accept the Joint Appeals Board's (JAB) recommendation to take no further action in her case and to maintain the decision to terminate her permanent appointment. This decision was communicated to her by the Under-Secretary-General for Administration and Management, on 19 August 1996.

II. The Applicant is requesting the Tribunal to rescind the decision to terminate her appointment, to order her reinstatement with full pay and to recommend payment of $250,000 for damages. She further requests that all negative and prejudical material be removed from her file and that she be awarded an additional $50,000 as compensation for the delays caused by the Respondent.

III. The Applicant contends that she was subjected to discriminatory treatment and that she was separated from service in violation of her rights under her contract of employment.

Therefore, the main issue before the Tribunal is whether the decision to terminate the Applicant's permanent appointment for abolition of post under the provisions of staff regulation 9.1(a) violated her rights.

IV. Staff regulation 9.1(a) provides that the Secretary-General "may terminate the appointment of a staff member who holds a permanent appointment if the necessities of the service require abolition of post or reduction of the staff ...". In 1992, the General Assembly in its resolution 46/235, mandated the Secretary-General to restructure the economic and social sectors of the Organization. That restructuring, which took place in 1993, appears to have been complex. It required the movement of whole divisions between Rome, Vienna, New York and Geneva and involved about 150 staff members. Of the 76 General Service staff affected by the reorganization, in the four duty stations, most were placed.

V. According to staff rule 104.5 and Appendix B to the Staff Rules, General Service posts are filled by local recruitment. The Applicant was one of 44 New York General Service staff whose posts were abolished in the restructuring. The Applicant was one of ten General Service staff members in the four duty stations for whom no suitable assignments could be found. The Director of Personnel recommended that nine of them, including the Applicant, be terminated.

VI. The Applicant's post was abolished with effect from 31 December 1993. She was granted a termination indemnity in accordance with Annex III to the Staff Regulations, as well as three months salary in lieu of notice as provided in staff rule 109.3(c). She was thus paid for 15 months of the period remaining until she reached retirement age.

VII. The Tribunal has previously held in its Judgement No. 54, Mauch (1954), that staff regulation 9.1 should not be applied in an arbitrary or capricious manner, nor for specious or

untruthful reasons, indicating a lack of good faith or due consideration for the rights of the staff member concerned. The Applicant submits that staff rule 109.1(c) provides that when the necessities of service require abolition of post or reduction of staff, staff members with permanent appointments shall be retained in preference to those on other types of appointment. This is, of course, "subject to the availability of suitable posts in which their services can be effectively utilized"and "provided that due regard shall be had in all cases to relative competence, to integrity and length of service."

VIII. The record indicates that the Applicant's file was sent to various offices in order to find an appropriate replacement post. The Respondent claims that due to the "controversial material" in her file none of these offices agreed to absorb her. This claim seems to be substantiated by the Respondent's response to questions posed by the Tribunal. However, the "controversial material" in her file does not consist of official performance evaluation reviews. It is composed of several negative memoranda from colleagues and from her supervisors. From 1 December 1982, through 31 March 1992, the Applicant received no PERs. Due to the missing PERs, the "controversial material" relating to negative episodes carried more weight than it might otherwise have done. The Applicant had a series of positive performance evaluation reports (PERs) through 1982.

IX. The Tribunal notes that the Applicant contributed to the lengthy period without PERs by procrastinating in the completion of the section for which she was responsible. The Tribunal has held that the right to a fair and impartial assessment of performance is an essential entitlement of a staff member (Judgement No. 363, De Franchis (1986)). The Tribunal finds that the Administration was largely responsible for failing in its obligation to present the Applicant with timely PERs, which may well have been the reason why the "controversial material" carried more weight than the previous positive reviews of her work.

X. The Tribunal does not agree with the findings of the JAB that the Applicant did not meet the burden of proving that the Administration was discriminating against her. While it appears to the Tribunal that the abolition of a number of posts was due to the Organization's restructuring, the Applicant seems to have been singled out. The Tribunal finds there is no convincing evidence of the Administration's good faith in its attempt to find an alternative post for the Applicant during the remaining months of her service until retirement age. This lack of good faith is particularly troubling in the Applicant's situation, as there was less than two years remaining until her retirement. For this, and for the failure to prepare timely evaluations, the Applicant is entitled to compensation, which the Tribunal assesses at the equivalent of seven months of her net base salary at the time of her separation from service.

XI. For the foregoing reasons, the Tribunal:

1. Orders the Respondent to pay to the Applicant the amount of seven months of her net base salary at the rate in effect at the time of her separation.

2. Rejects all other pleas.

(Signatures)

Mayer GABAY
First Vice-President, presiding

Deborah Taylor ASHFORD
Second Vice-President

Chittharanjan Felix AMERASINGHE
Member

Geneva, 31 July 1998

R. Maria VICIEN MILBURN
Executive Secretary

United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/876
31 July 1998

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 876

Case No. 977: TINKL

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mayer Gabay, First Vice-President, presiding; Ms. Deborah Taylor Ashford, Second Vice-President; Mr. Chittharanjan Felix Amerasinghe;

Whereas, on 20 February 1997, Susanne Tinkl, a staff member of the United Nations, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 30 May 1997, the Applicant, after making the necessary corrections, again filed an application requesting the Tribunal, inter alia:

"1. [To order] the Secretary-General [to pay] the amount accepted by [him] (8.5 days).

2. [To order] payment for additional 1 ½ days of accrued leave, as recommended by the JAB [Joint Appeals Board] and compensation for late payment (four years)."

Whereas the Respondent filed his answer on 26 June 1997;

BEST COPY AVAILABLE

Whereas the Applicant filed an additional document on 7 July 1997, stating that:

"I wish to acknowledge that I have received $1,678.84 as payment for 8.5 days of accrued annual leave in May 1997. As I received the statement of my bank for the month of May only on 15 June 1997 I was not aware that this amount had been paid prior to my application.

Therefore, my application will be limited to plea No. 2:

'I request payment for additional 1 ½ days of accrued leave as recommended by the JAB and compensation for late payment.'"

Whereas, on 2 July 1998, the Tribunal put questions to the Respondent, to which he provided answers on 6 July 1998;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations Institute for Training and Research (UNITAR) on 4 March 1990, on a fixed-term appointment of one year, as a Junior Professional Officer at the P-2 level. Her appointment was extended for two further fixed-term periods of one-year each. On 5 March 1993, she was reassigned from UNITAR to the United Nations Environment Programme, Regional Office for North America, as a Liaison Officer at the P-3 level, on a fixed-term appointment, through 31 August 1993, when she separated from the Organization.

On 30 September 1993, the Applicant re-entered the service of the United Nations on a probationary appointment at the P-3 level, as an Information Officer in the Department of Public Information. On 1 September 1995, her appointment was converted to permanent.

On 9 November 1993, the Applicant wrote to the Acting Executive Director, UNITAR, claiming that on the expiration of her fixed-term contract with UNITAR on 4 March 1993, she was entitled to, inter alia, "compensation of [her] accrued annual leave (16 days)".

On 18 May 1994, the Acting Executive Director, UNITAR, acknowledged to the Chief, Payroll Unit, Office of Programme Planning, Budget and Accounts (OPPBA), that, upon the closing of UNITAR headquarters on 30 June 1993, 18 days of accrued annual leave should have been credited to the Applicant. He requested that the corresponding amount owing to the Applicant be deposited in her Chemical Bank account.

On 30 September 1994, the Chief, Payroll Unit, OPPBA, informed the Acting Executive Director, UNITAR, that after conducting an audit of the Applicant's leave attendance records, "it was revealed that the balance of her annual leave as of her separation date of 4 March 1993 was 5.5 days", for which she had been subsequently paid. This was explained to the Applicant by the Termination Unit, Payroll.

On 2 May 1995, the Applicant wrote to the Secretary-General requesting an administrative review of that decision.

On 23 June 1995, the Deputy to the Assistant Secretary-General and Director, Staff Administration, Compensation and Classification Division (SACCD), Office of Human Resources Management, on behalf of the Secretary-General, informed the Applicant that, after conducting an audit of her leave records for the period 4 March 1990 through 4 March 1993, the Office of Internal Oversight Services (OIOS) had found some errors in the computation of her leave balance. She informed the Applicant that:

> "[I]n order to correct an administrative error made in connection with travel time for your home leave in June 1992, you will receive payment for two additional days of leave due you with your 30 June 1995 pay cheque. However, payment for more than two additional days of leave does not appear warranted in view of the attached audit report."

On 24 July 1995, the Applicant lodged an appeal to the Joint Appeals Board (JAB) against that decision. During the course of the JAB proceedings, the Respondent produced a communication dated 26 July 1996, from the Director, Audit and Management Consulting

Division, OIOS, stating that the Applicant should have been paid for 10 days of accrued annual leave upon her separation from UNITAR. The JAB adopted its report on 28 August 1996. Its conclusions and recommendation read as follows:

> "Conclusions and Recommendation
>
> 26. In light of the above considerations, the Panel unanimously agreed that the Appellant had timely made a written claim following her separation from UNITAR on 4 March 1993.
>
> 27. In view of [the acquiescence of the Director, Audit and Management Consulting Division, OIOS], contained in his memorandum dated 26 July 1996, to [the Chief, Administrative Review Unit, SACCD], that 'an additional 10 days of annual leave should have been paid to the Appellant upon her separation from UNITAR effective 4 March 1993', the Panel unanimously recommends that the Appellant be compensated for ten days of additional annual leave."

On 18 November 1996, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report and informed her as follows:

> "The Secretary-General has examined your case in the light of the Board's report. He has taken note of the Panel's determination that you made a timely written claim regarding your annual leave entitlement following your separation from UNITAR and of its recommendation that you be compensated for ten days of additional annual leave. The Secretary-General has also taken note of an OIOS audit which took place after the preparation of the Board's report and which you have also seen. In accordance with all the documentation in file, the Secretary-General has decided that you be compensated for eight and a half days of additional annual leave.
>
> ..."

On 30 May 1997, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

The Applicant should be paid for the 1.5 days accrued annual leave that the JAB determined that she is owed, along with compensation for the four-year delay in paying her.

Whereas the Respondent's principal contention is:

The Applicant has been paid the amount that was due her, that is, for 8.5 days of accrued annual leave.

The Tribunal, having deliberated from 30 June to 31 July 1998, now pronounces the following judgement:

I. The Applicant is appealing a decision of the Secretary-General dated 18 November 1996, whereby he partially accepted the recommendation of the Joint Appeals Board (JAB) and granted the Applicant compensation for eight and a half days of annual leave. The Applicant is requesting payment of an additional one and a half days of accrued leave as recommended by the JAB and compensation for late payment.

II. In its report dated 28 August 1996, the JAB accepted the Applicant's claim that, upon her separation from UNITAR, she was entitled to be paid an additional ten days of annual leave. The JAB rejected the Respondent's submission that the Applicant had not made a written claim for her annual leave within the one-year time limit set forth in staff rule 103.15(ii).

III. The JAB maintained that the claim made by the Applicant on 9 November 1993, was well within the one-year time limit prescribed by the Staff Rules. In her claim, the Applicant argued that, on the expiration of her fixed term contract with UNITAR, she would be entitled

to compensation for her accrued annual leave. This was considered to be a timely claim according to staff rule 103.15(ii).

IV. The Tribunal was unable to determine from the record the reason why the Secretary-General reduced the amount of accrued annual leave that the JAB recommended the Applicant be paid from ten days to eight and a half days. In response to a question put by the Tribunal, the Respondent produced a memorandum dated 23 October 1996, which indicated that, in an audit by OIOS that took place after the completion of the JAB's report, it was established that the Applicant was entitled to only eight days of annual leave. The Respondent states that he granted her eight and a half days of annual leave due to "lack of clarity" in the file regarding the additional 1 1/2 day. The Tribunal decides that due to the lack of clarity and inconsistency on the part of the Administration, the Applicant should receive what the JAB recommended that she be paid, namely 10 days of accrued annual leave.

In a memorandum dated 30 December 1996, to the Applicant, the Senior Legal Advisor, Office of the Under-Secretary-General for Administration and Management, noted that the Applicant had already been informed of the results of the latest OIOS audit. Neither the Respondent nor the Applicant made these documents available to the Tribunal in their submissions. As a result of these unexplained omissions from the pleadings, the Tribunal was obliged to enquire from the Respondent, as to the reasons for his decision. Both parties are reminded that it is their duty to submit a complete record of relevant documentation supporting their respective positions. In this case, both parties failed to adhere to this standard.

V. For the foregoing reasons, the Tribunal:

1. Orders the Respondent to pay the Applicant the amount corresponding to one and a half days of accrued annual leave.

2. Rejects all other pleas.

(Signatures)

Mayer GABAY
First Vice-President, presiding

Deborah Taylor ASHFORD
Second Vice-President

Chittharanjan Felix AMERASINGHE
Member

Geneva, 31 July 1998

Maria VICIEN MILBURN
Executive Secretary